Supreme Court, U.S.
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No. 85-537

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ANDREWS B. CAMPBELL
and
DENNIS EUGENE FRIEL,
Petitioners

v.

STATE OF MAINE,
Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether, contrary to the holding of the Supreme Judicial Court of Maine, the trial justice who summarily cited Petitioners for contempt was biased.

(2) Whether, although not raised in the Supreme Judicial Court of Maine, Petitioner Friel was denied due process by the failure of the trial transcript to contain a description of certain of the contemptuous conduct of Petitioner Friel, when the record as a whole does contain such a description.

(3) Whether the Supreme Judicial Court of Maine correctly found the evidence was sufficient to sustain Petitioner Campbell's contempt conviction.

(4) Whether this Court should review the propriety of a federal court order to which Respondent is not a party, which is not relevant to either Petitioner's contempt conviction, which was not timely brought to the attention of the Supreme Judicial Court of Maine, and upon which in any event that court could have made no judgment.

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III. THE SUPREME JUDICIAL COURT OF MAINE CORRECTLY FOUND THE EVIDENCE WAS SUFFICIENT TO SUSTAIN THE CONTEMPT CITATION OF PETITIONER CAMPBELL.

IV. THIS COURT SHOULD NOT REVIEW THE PROPRIETY OF A FEDSERAL COURT ORDER TO WHICH RESPONDENT IS NOT A PARTY, WHICH IS NOT RELEVANT TO EITHER PETITIONER'S CONTEMPT CONVICTION, WHICH WAS NOT TIMELY BROUGHT TO THE ATTENTION OF THE SUPREME JUDICIAL COURT OF MAINE, AND UPON WHICH IN ANY EVENT THAT COURT COULD HAVE MADE NO JUDGMENT.

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OPINIONS BELOW

The opinions of the Supreme Judicial Court of Maine, affirming the convictions of contempt as to each Petitioner, are published as State of Maine v. Andrews B. Campbell, 497 A.2d 467 (Me. 1985), and State of Maine v. Dennis Eugene Friel, 497 A.2d 475 (Me. 1985). The opinions are reproduced as Appendix One and Appendix Two, respectively, of the Petition for Writs of Certiorari. An "AFFIDAVIT AND ORDER" had been prepared in each case by the trial justice in the Maine Superior Court, certifying the grounds upon which he relied in finding each Petitioner in contempt. These are reproduced in the Petition for Writ of Certiorari as Appendix Five (as to Petitioner Friel) and Appendix Six (as to Petitioner Campbell).

JURISDICTION

The judgments of the Supreme Judicial Court of Maine in State of Maine v. Andrews B. Campbell, 497 A.2d 467 (Me. 1985), and State of Maine v. Dennis Eugene Friel, 497 A.2d 475 (Me. 1985), were entered on August 6, 1985, and the court's mandate issued the same day. On August 26, 1985, the court, as to both cases, denied motions for reconsideration and stayed execution of the sentences. The stays were to expire on September 30, 1985, unless before that date petitions for writs of certioriari were filed in this Court. A joint Petition for Writs of Certiorari was filed September 27, 1985. The stays have remained in effect pending disposition of the case by this Court. Upon request by Respondent for an

extension of time to file a brief in opposition to the Petition for Writs of Certiorari, the Clerk of this Court on October 16, 1985, granted an extension until November 25, 1985, pursuant to U.S. Sup. Ct. Rule 29.4. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION AND PROCEDURAL RULE

Fourteenth Amendment, United States Constitution: "...nor shall any State deprive any person of life, liberty, or property without due process of law...."

Rule 42(a), Maine Rules of Criminal Procedure:

> (a) Summary Disposition. A criminal contempt may be punished summarily if the justice certifies that he saw or heard the conduct constituting the contempt and that it was committed in

> the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the justice and entered of record.

STATEMENT OF THE CASE

Respondent does not accept the "STATEMENT" in the Petition for Writs of Certiorari at 8-30.[1] Respondent accepts

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[1] U.S. Sup. Ct. Rule 21.5 provides: "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition." The "STATEMENT" as well as the arguments associated with each of the three points in the Petition are replete with irrelevancies, inaccuracies, miscitations, misquotations, erroneous or misleading statements, and distortions of the record.

These alone should be reason enough for the Court not to exercise its discretion in favor of review, although to become bogged down in all of these may divert the Court's attention from consideration whether the Petition otherwise has merit. But Respondent does not wish the Court to

the statements of fact as described by the Maine Supreme Judicial Court in State v. Campbell, 497 A.2d at 469-71, App. at 1-2 to 1-11; and State v. Friel, 497 A.2d at 476-77, App. at 2-2 to 2-5, wishing only to elaborate briefly on them.

It is true that Petitioners had asked the trial justice to recuse himself, solely because he was a Roman Catholic. Yet at the outset of a pre-trial motions hearing on September 7, 1984, Petitioner Campbell stated that he "will respect the Court's ruling and you personally. I respect your faith and integrity." (M.T. at 25.) Even after repeated misbehavior by Petitioner

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conclude it has failed to recognize the abuses of the record or has acquiesced in them. Therefore, in the footnotes in this brief in opposition the State will note some of the errors.

Friel during that hearing, Petitioner Campbell said he would "[w]ant to thank the Court for its latitude so far today and politeness." (M.T. at 97.) Then after further misconduct by Petitioner Friel during jury selection on September 10, 1984, and after Petitioner Friel had not arrived on time for trial the next day, Petitioner Campbell stated to the trial justice:

> I have differed with my client in many cases. I believe the Court has shown great respect for them as persons and in its dealings, and sometimes it's not reciprocated, and I have no excuse or apology to offer for their behavior in that respect.

(T. at 182.) Co-counsel agreed both defendants had been angry and disrespectful. (T. at 185, 186.)

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE SUPREME JUDICIAL COURT OF MAINE CORRECTLY REJECTED THE CONTENTION THAT THE TRIAL JUSTICE WAS BIASED.

Point I (which by its terms applies only to Petitioner Friel) and Point II (which by its terms applies only to Petitioner Campbell) share in common the premise that the trial justice was not impartial. Although phrased somewhat differently, both points assert that such bias was objectively ascertainable. The very premise upon which Petitioners' arguments are constructed is unsupported by the record.

What is claimed to be clear from an objective viewing has, in fact, been

perceived throughout these proceedings only by Petitioners. The Maine Supreme Judicial Court rejected any such view of the trial justice, instead finding he "displayed exemplary patience and restraint" and "did not quarrel with Campbell [or Friel] or otherwise depart from an appropriate judicial demeanor." State v. Campbell, 497 A.2d at 474, App. at 1-25; State v. Friel, 497 A.2d at 477-78, App. at 2-9. Similarly, in a pre-trial hearing on a mandamus petition of Petitioner Friel to recuse the trial justice, a single Justice of the Maine Supreme Judicial Court had found any prophylactic rule of Withrow v. Larkin, 421 U.S. 35 (1975), inapplicable because the trial justice could act "with complete impartiality." Friel v. State of

Maine, No. CV-84-856 (Sept. 5, 1984) (Scolnik, J.). (R. at 426-428.)[2]

The premise upon which both Points I and II of the Petition are based also is belied by the words of Petitioner Campbell himself. These are set forth in this brief in opposition in the STATEMENT OF THE CASE above. The record in this case does not contain a single harsh or intemperate word spoken by the trial justice to either Petitioner, and neither Petitioner has cited any. In these respects, although Petitioners appear to rely on them, this case is plainly far different from the extraordinary circumstances of both Taylor

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[2] The Petition at 26-27 thus errs in stating this mandamus action was "still pending during trial." The dismissal by Justice Scolnik was before trial.

v. Hayes, 418 U.S. 488 (1974), and Mayberry v. Pennsylvania, 400 U.S. 455 (1971).[3]

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[3] Supposedly as an example of the trial justice's lack of fairness, the Petition at 27-28 suggests that Petitioner Friel was, against his will, excluded from the trial court's "opening address to the jury" and "challenges to the jury." But the transcript reflects no absence of Petitioner Friel during the address to the jury. (T. at 44-64) The court did exclude Petitioner Friel from pre-trial chambers conferences, but at no time were challenges to the jury there made. The only time Petitioner Friel was absent from jury voir dire was when he himself twice chose to leave. The first time was when he and his codefendant apparently had gone to get something to eat. (T. at 116-122.) The second was when Petitioner Friel said to the trial justice, "I'll leave. I don't like your pukey face." (T. at 170.)

As another claimed example of unfairness, the Petition at 23 states that "the only discussion [concerning the contempt citation of Petitioner Friel] occurred while Campbell was not present," citing T. at 411-412. It would be more accurate to say that the trial justice began speaking with the codefendant's attorney, because Petitioner Campbell was late returning to the courtroom, about the codefendant's status now that Petitioner

Unlike those cases, there was here, as the Maine Supreme Judicial Court found, no embroilment by the trial justice with either Petitioner in a running controversy. State v. Campbell, 497 A.2d at 473-74, App. at 1-22 to 1-25; State v. Friel, 497 A.2d at 477-78, App. at 2-8 to 2-11.

There is not the slightest hint that the trial justice did not, in fact, try the case fairly, and neither Petitioner contends otherwise. Indeed, the court went out of its way to assure that Petitioner Friel and his codefendant were fairly

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Friel had been removed from the courtroom. After Petitioner Campbell returned, the trial justice told him he did not want "to get into the facts and circumstances of the reasons of my finding [Petitioner Friel] in contempt." (T. at 414.) Petitioner Campbell at length expressed himself on what had occurred. (T. at 413-418.)

tried. For example, upon Petitioner Campbell's expressing concern about security measures at the courthouse, the trial justice sought to negate any inference the jury array might draw that the security measures were used because the defendants were especially dangerous. (T. at 44-45.) And during trial, after a witness had failed adequately to identify Petitioner Friel as the State had expected, the court instructed the jury "to totally disregard her identification of these individuals...." (T. at 406.)

Petitioners instead seek to allege that there was an appearance of bias by the sole fact that the trial justice is a Roman Catholic and Petitioner Friel adheres to rabid anti-Catholicism. The Petition at 42

simply characterizes important principles enunciated in Withrow v. Larkin, 421 U.S. at 47; Taylor v. Hayes, 418 U.S. at 501; and Johnson v. Mississippi, 403 U.S. 212, 216 (1971), as "self-executing," as if merely invoking axioms relating to an appearance of bias is sufficient to require disqualification of a judge. This Court has never accepted such an obviously illogical proposition.[4]

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[4] The Petition at 42 implies that the Maine Supreme Judicial Court "acknowledges" that principles of judicial disqualification are self-executing, citing Brengelmann v. Land Resources, 393 A.2d 174 (Me. 1978). This is erroneous. The Maine court there recognized the teachings of Withrow v. Larkin, supra, but after exploring the facts behind the appellant's motion to recuse the trial justice in that case held that judicial disqualification was not warranted.

For example, only after careful examination of the historical facts in Johnson v. Mississippi, supra, did this Court reverse the appellant's contempt citation. The Court observed that the trial judge there "immediately prior to the adjudication of contempt was a defendant in one of petitioner's civil rights suits and a losing party at that." 403 U.S. at 215. By contrast, a federal suit by Petitioner Friel against the trial justice in the present case was dismissed without a hearing before trial. The Court of Appeals later affirmed the dismissal in an unreported decision. Friel v. Scales, No. 84-1743 (1st Cir. Feb. 15, 1985) (per curiam).

Petitioners' assertions are no more or less than that judicial bias must be found, and so a trial judge must be disqualified, whenever a trial judge's tenets of faith are in conflict with a defendant's strongly held beliefs. Not only is such a position without merit as a general proposition, but the record here does not support the conclusion that the trial justice should have recused himself. First, the trial justice repeatedly sought to remove any issue of religion from the trial. (M.T. at 20-21, 24; T. at 13-14, 34-35.) Second, Petitioner Friel was tried jointly with a codefendant. The trial justice had a duty to preside over the codefendant's trial also, and nothing suggests the codefendant held any views like Petitioner Friel's

towards Catholics. Petitioner Friel specificially did not want his case severed from his codefendant's. (M.T. at 92-93.) Third, although Petitioner Campbell also relies on a claimed religious bias of the trial justice, there is nothing to show that he shared Petitioner Friel's anti-Catholic bigotry. On the contrary, he stated his respect for the court's faith. (M.T. at 25.) Petitioner Campbell can hardly assume a position applicable, if at all, only to Petitioner Friel. Fifth, Petitioner Friel's religious beliefs cannot excuse his misbehavior or be a defense to his contempt conviction. E.g., In re Chase, 468 F.2d 128, 134 (7th Cir. 1972), id. at 140 (Stevens, J., dissenting).

In short, Petitioners' argument is premised upon the trial justice having been in fact or by appearances biased. The Maine Supreme Judicial Court, however, correctly applied pertinent decisions of this Court and found otherwise.

II. PETITIONER FRIEL DID NOT RAISE IN THE SUPREME JUDICIAL COURT OF MAINE ANY ARGUMENT THAT HE WAS DENIED DUE PROCESS BY THE FAILURE OF THE TRIAL TRANSCRIPT, IN CERTAIN RESPECTS, TO CONTAIN A DESCRIPTION OF CERTAIN OF HIS CONTEMPTUOUS CONDUCT, WHICH IN ANY EVENT IS IN THE RECORD AS A WHOLE.

Point I of the Petition by its terms applies only to Petitioner Friel. As best Respondent can discern, the argument appears to be that the record does not reflect one in a series of incidents which

led to Petitioner Friel's being held in contempt, and that this denies him due process. It is only the incident which finally impelled the trial justice to invoke the contempt sanction -- Petitioner Friel's vulgar announcement that he had "to piss," followed by his leaving the courtroom without permission, followed by his approaching the bench and glaring, followed by his obscene gesture, accompanied by his derisive sarcasm -- that is said not to be "cited of record." The argument appears really to refer to the trial transcript when it uses the phrase "cited of record."

This issue was neither presented to nor passed upon by the Maine Supreme Judicial

Court. Petitioner Friel in the Maine court did complain that "[a] review of the record in this case gives little indication of exactly what word or deed gave rise to the Court's finding of contempt against Mr. Friel." Brief of Appellant at 9, State v. Friel, 497 A.2d 475 (Me. 1985). But at no time was the argument made that any claimed inadequacies in the transcript constituted a denial of due process. It is settled that this Court will not undertake to review a claim when a lower court has not been given an opportunity to pass on it. E.g., Illinois v. Gates, 462 U.S. 213, 217 (1983).

Furthermore, even had Point I been properly preserved, it raises no substantial federal question. The Petition

misconstrues what the "record" is.[5]

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[5] The Petition also misquotes the transcript, by both omission and commission. For example, the Petition at 11 quotes T. at 409 as follows:

> "THE COURT: Due to the conduct of the Defendant in this Courtroom, which I find totally disrespectful, I do hereby find Mr. Friel in contempt of court. I do hereby sentence him to three days at the Knox County Jail, the Defendant, Mr. Friel."
>
> MR. CAMPBELL: What conduct?
>
> THE COURT: Mr. Campbell, you are an officer of the Court.

In fact, just after "MR. CAMPBELL: What conduct?" the following was stated:

> THE COURT: The Defendant is to be taken into custody and removed from the courtroom.
>
> MR. CAMPBELL: What conduct? I just addressed the Court--

M.R. Crim. P. 42(a), which is identical to F.R. Crim. P. 42(a) except for the word "justice" instead of "judge,"

The Petition at 15, quoting T. at 415, similarly leaves words out. And in another instance, Petition at 17, words are inserted as if they are in the transcript when they are not. The phrase "(No further response by the Court.)" is not in the transcript.

Likewise, the Petition often miscites the transcript. For example, the Petition at 27 says:

> The trial judge was represented by the Attorney General of the State of Maine, which was prosecuting Friel. (M.T. 99-101, 104-106, 134-135, 161-164, 170, 184-187, 316-317, 369-370.)

To begin with, there are no such "M.T." pages. Even if read as pages of the record ("R. at __") or transcript ("T at__"), only the very last references, R. at 369-370, supports the proposition stated, which in any event does not appear relevant to any issue raised by the Petitioner.

requires a trial justice to file an "order of contempt [which] shall recite the facts and shall be signed by the justice and entered of record." The order thus becomes a part of the record for appellate review, as it did in this case by the trial justice's AFFIDAVIT AND ORDER. (Petition, App. 5-1 to 5-7 and 6-1 to 6-4.) The argument in Point I of the Petition simply ignores that the trial justice's AFFIDAVIT AND ORDER is an integral part of the record and that the Maine Supreme Judicial Court had no difficulty ascertaining what Petitioner Friel's contumacious conduct was.

The Maine Supreme Judicial Court in this case merely applied its previous decisions by which, together, "the order and trial transcript provide a sufficient

basis for review." State v. DeLong, 456 A.2d 877, 883 (Me. 1983). As the Petition at 12 recognizes, this Court has followed a like approach. E.g., Taylor v. Hayes, 418 U.S. at 492-94 n.3; Sacher v. United States, 343 U.S. 1, 5 (1952).

The reason both are considered is to provide "as full a picture as words can portray of the contumacious conduct." State v. Alexander, 257 A.2d 778, 781 (Me. 1969). The transcript itself cannot describe a "defendant's 'manner' while speaking and his 'tone of voice' as being 'insulting.'" In re Steinberger, 387 A.2d 1121, 1123 (Me.), cert. denied, 439 U.S. 985 (1978). "The stenographic record will not pick up such elements of in-court misbehavior as rude and disrespectful tone

of voice or manner of address, nor the shaking of one's finger in a belligerant way." State v. Alexander, 257 A.2d at 781. See also United States v. Proffitt, 498 F.2d 1124, 1129 (3d Cir.), cert. denied, 419 U.S. 1002 (1974) ("the printed words do not reveal the smirk, the sneer, or the clearly felt, though perhaps nonarticulated intent of the defendant" (footnote omitted)).

Petitioner Friel would have this Court impose a due process requirement that a trial judge, each and every time he observes contumacious behavior, shall speak to the court reporter and have him take down a description of the misconduct as the judge saw it. Such Shakespearean asides would only further interrupt and prolong

proceedings and would provide disputatious and disruptive defendants a platform from which to object, for the sake of objecting, to the court's descriptions. It is not to be expected that disrespectful and disorderly defendants suddenly are going to accept without debate or quarrel, perhaps considerable, a trial court's descriptions.

III. THE SUPREME JUDICIAL COURT OF MAINE CORRECTLY FOUND THE EVIDENCE WAS SUFFICIENT TO SUSTAIN THE CONTEMPT CITATION OF PETITIONER CAMPBELL.

Point II of the Petition by its terms applies only to Petitioner Campbell.[6]

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[6] The very statement of Point II is in error, Petition at 47, stating that the trial justice held Petitioner Campbell in contempt in part due to his failure to cross-examine witnesses. This is demonstrably not so, inasmuch as the failures to cross-examine did not occur until after Petitioner Campbell had been

Respondent has already shown that this

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held in contempt. Moreover, the Petitioner miscites as five the number of witnesses not cross-examined. In fact, there were four witnesses, one of whom twice was not cross-examined by Petitioner Campbell. (T. at 441, 446, 456, 460-461, 467.)

Furthermore, as with the Petition's first point, the argument in Point II contains flat inaccuracies. The Petition at 48 (emphasis in original) states:

> The trial transcript, however, discloses that counsel, when directed, remained in the Courtroom at all times, (T.T. at 440-469), and that at no time did Campbell's exits or entrances disrupt the trial, (T. T. 414, 415, 416, 417, 420, 424-427, 431-432.), but the trial continued with celerity. Further, the trial judge at no time prohibited consultation with his client until after finding Campbell in contempt. (T.T. 417, 420, 425, 431-432, 440.)

In fact, the trial justice explicitly had refused to give Petitioner Campbell permission to leave the courtroom (T. at

point is based on an erroneous premise --

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424), telling him that if he did so it would be "at [his] peril." (T. at 415, 417.) Thus it is, too, that the last sentence quoted above is simply wrong. The court refused, before holding him in contempt, to allow Petitioner Campbell to leave to speak with his client. (T. at 417, 424.) And after he was held in contempt (T. at 440), Petitioner Campbell never asked to consult with his client. Rather he chose "to stand mute" as several witnesses testified. (T. at 447.)

Indeed, the Petition at 18 admits Petitioner Campbell left the courtroom:

> The trial judge allowed Campbell thereafter without comment to exit the Courtroom three times to a room where the trial justice stated that Friel could listen to the trial. (T.T. 427, 430-432.) The trial continued during Campbell's brief absences.

Yet even this is erroneous. The first sentence quoted just above is accurate only in the sense that, when Petitioner Campbell did wander out of and back into the courtroom (T. at 420-424, 425-427, 431-432), the trial justice did not have the sheriff restrain him. But to say that

that the trial justice was not impartial -- and one inapplicable to Petitioner Campbell in any event. Apart from this, the argument in Point II, although couched in constitutional terms, simply asks this Court to review the sufficiency of the evidence by relitigating whether in the particular circumstances of this case the trial court properly held Petitioner

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the court "allowed" him to leave is disingenuous at best. Further, the second sentence quoted just above is most misleading. While it is true that the trial did not grind to a halt, that was not the result of any effort or desire of Petitioner Campbell. On one occasion Petitioner Campbell returned to the courtroom and spoke to the trial justice during the State's examination of a witness. The trial justice told him "you are interrupting the proceedings." (T. at 424.) Petitioner Campbell three times previously had sought, by mistrial motions, to terminate the trial. (T. at 386, 407, 415-416.)

Campbell in contempt.[7]

After full and careful consideration of substantial evidence, the Maine Supreme Judicial Court correctly held:

> Campbell's disruptive actions and statements on the several occasions when he left and then reentered the courtroom were all part of his continuing refusal to abide by the ruling of the court excluding his client from

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[7] Among other things, the trial justice's "AFFIDAVIT AND ORDER," setting forth the bases for the contempt citation, notes that Petitioner Campbell shook hands with a witness in the jury's presence. App. at 6-2. The Petition at 49 n.7 in justifying such conduct says that the Maine court "ignore[ed] he was in fact of record a defense witness. (R. 435; T.T. 299)." (Emphasis in original.) Even if true, that would not justify the conduct, of course. But additionally, the Petition is entirely misleading. The reference to R. at 435 is to a defense request to have this witness subpoenaed. But that hardly makes him a defense witness when he was testifying, as he was, during the State's case-in-chief.

> the proceedings. Campbell went far beyond the bounds of permissible advocacy in responding to this ruling of the Superior Court.

State v. Campbell, 497 A.2d at 472-73, App. at 1-17 to 1-18. The facts of this case are peculiar and unlikely to recur. This Court "do[es] not grant certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925). This Court's discretionary review is not warranted to resolve any issue important to the law itself.

IV. THIS COURT SHOULD NOT REVIEW THE PROPRIETY OF A FEDERAL COURT ORDER TO WHICH RESPONDENT IS NOT A PARTY, WHICH IS NOT RELEVANT TO EITHER PETITIONER'S CONTEMPT CONVICTION, WHICH WAS NOT TIMELY BROUGHT TO THE ATTENTION OF THE SUPREME JUDICIAL COURT OF MAINE, AND UPON WHICH IN ANY EVENT THAT COURT COULD HAVE MADE NO JUDGMENT.

Point III of the Petition concerns a matter about which Respondent has no real knowledge.[8] It concerns a federal court order to which Respondent is not a party. It was never raised before the Maine Supreme

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[8] Yet even here again the Petition miscites the record. The Petition at 56 refers to "(R. 42)" as support for the statement that Petitioner Friel made an "express objection" to the appointment of the investigator. If he did, it is certainly not demonstrated by R. at 42 or T. at 42.

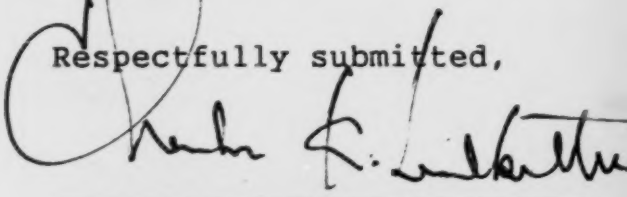
Judicial Court for decision by that court. The affidavit of Petitioner Friel described in the Petition at 56 is dated August 15, 1985 -- nine days after the Maine Supreme Judicial Court had affirmed the contempt convictions of both Petitioners.

In any event, Respondent does not comprehend what decision the state court could have rendered relative to a federal court order. Respondent simply does not understand what relevance this matter has to the contempt convictions of either Petitioner. This Court should not exercise its discretionary power to review a matter which has nothing to do with the judgments entered below.

CONCLUSION

Upon consideration of the substance of the points raised by Petitioners, as well as under U.S. Sup. Ct. Rule 21.5, the joint Petition for Writs of Certiorari should be denied.

Respectfully submitted,



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Dated: November 20, 1985

CERTIFICATE OF SERVICE

I, Charles K. Leadbetter, Assistant Attorney General, hereby certify that pursuant to U.S. Sup. Ct. Rules 22.1, 28.3, and 28.5(b), I have caused three copies of the foregoing "Brief of Respondent in Opposition" to be served on the other parties to this proceeding by depositing said copies in the United States Mail, postage prepaid, addressed to:

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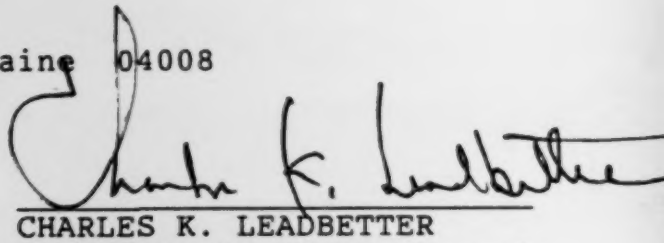
Bowdoinham, Maine 04008



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